

**THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF  
PENNSYLVANIA**

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**XIV. ARBITRATION**

Our arbitration program provides litigants with a more prompt and less expensive alternative to the traditional courtroom trial. It has been in operation since 1978 and includes all civil cases (except social security cases, cases in which a prisoner is a party, cases alleging a violation of a constitutional right and cases where jurisdiction is based on 28 U.S.C. §1343) where money damages only are sought in an amount not exceeding \$100,000. Counsel are advised to refer to Local Civil Rule 53.2 for the specific types and categories of cases that are considered to be eligible for arbitration.

**A. Procedure for Cases Eligible for Arbitration**

When a complaint is filed, our local civil rule provides that damages are presumed to be not in excess of \$100,000 unless counsel certifies that the damages exceed that amount. Immediately after the answer is filed, the attorneys receive a letter from the Clerk's Office advising them of the date for the arbitration hearing and also notifying them that discovery must be completed within 90 days. The clerk schedules the arbitration hearing for a specific day, usually a date about four months after an answer has been filed. In the event a party files a motion for judgment on the pleadings, summary judgment, or similar relief, our local rule provides that the case may not be heard until the court has ruled on the motion. However, the filing of a motion after the judge designates the arbitrators who will hear the case (usually about 30 days prior to the arbitration hearing) shall not stay the arbitration unless the judge so orders.

**B. Trial Procedure**

Although the Federal Rules of Evidence are designated as guides for the admissibility of evidence at the arbitration hearing, copies or photographs of exhibits must be marked for identification and delivered to the adverse party at least ten days prior to arbitration. The arbitrators shall receive such exhibits in evidence without formal proof, unless counsel has been notified at least five days prior to the hearing that their opponent intends to raise an issue concerning the authenticity of the exhibit. The arbitration hearing is not recorded unless a party at their own expense arranges for a recording. The arbitrators are authorized to change the date of the arbitration hearing, provided it takes place within 30 days of the date originally scheduled.

**C. Arbitrators**

We now have approximately 1400 lawyers certified as arbitrators. In order to qualify for certification, the lawyer must be admitted to practice before our court, be a member of the bar for at least five years, and be determined by our Chief Judge to be competent to perform the duties of an arbitrator. An arbitrator receives \$100 for each case arbitrated. Three arbitrators are appointed for each case. They are randomly selected by the Clerk and each panel of three arbitrators is composed of one whose practice is primarily representing plaintiffs, one whose practice is primarily representing defendants, and one whose practice does not fit either category. The arbitrators are scheduled for hearing dates several months in advance. However, it is not until the judge signs the order designating the arbitrators who will hear the case (approximately 30 days prior to the arbitration hearing) that counsel learn the identity of the arbitrators and the arbitrators become aware of the case assigned to them.

#### **D. Arbitrators' Award**

Immediately after the hearing, the arbitrators make a very simple award, e.g., "Award in favor of defendant" or "Award in favor of plaintiff in the amount of \$ against (naming one or more defendants)." The arbitrators are instructed that they should not file findings of fact, conclusions of law or opinions of any kind. The arbitrators' award shall be entered as the final judgment of the Court, unless within 30 days of the filing of the award a party demands a trial de novo.

#### **E. Demand for Trial De Novo**

Upon the filing of a demand for trial de novo the case proceeds as if it had never been heard by the arbitrators. The party who demands a trial de novo (except the United States) must pay into the court the \$100 fee paid to each arbitrator (a total of \$300) unless the court signs an order permitting the party to proceed in forma pauperis. The arbitrators' fee so deposited will be returned in the event the party demanding the trial de novo obtains a final judgment, exclusive of interest and costs, more favorable than the arbitrators' award. Otherwise, the sum so deposited is forfeited to the United States.

### **XV. MEDIATION**

The mediation program was instituted in an effort to reduce the cost and delay of litigation in the federal courts. The Court-Annexed Mediation program was instituted on January 1, 1991. The mediation program includes all "odd" numbered cases except social security cases, cases in which a prisoner is a party, cases eligible for arbitration, asbestos cases, any case where a party is pro se and any case which a judge determines is not suitable for mediation.

Counsel are advised to refer to Local Civil Rule 53.2.1 for the specific types and categories of cases that are considered to be eligible for mediation.

#### **A. Procedure For Cases Eligible For Mediation**

In all cases determined eligible for mediation, immediately after the first appearance of a defendant is filed, notice of the mediation conference is sent to all counsel and any unrepresented parties. The notice shall set forth the date, time and place of the mediation conference and the name, address, and telephone number of the mediator. The date of the Mediation Conference will be set within sixty (60) days of the filing of the first appearance of a defendant.

A mediator will be randomly selected from the list of lawyers who are certified as mediators. The Mediation Clerk will forward copies of the complaint and any other pleadings filed as of the date the notice was mailed. The Mediator is authorized to change the date and time of the mediation conference provided the conference occurs within fifteen days of the original date. The Mediation Clerk may authorize a 30 day continuance as long as it is requested at least 14 days prior to the scheduled mediation date and counsel certify that this continuance will enable them to be better prepared to discuss settlement (see Local Civil Rule 53.2.1(4)(d).) Any other continuances must be approved by the judge assigned to the case. Mediators shall disqualify themselves for bias or prejudice as provided by 28 U.S.C. §144 and shall disqualify themselves in any action in which they would be required under 28 U.S.C. §455 if they were a justice, judge or magistrate judge.

#### **B. Mediation Conference Procedure**

The mediation conference shall take place in a location designated by the Mediation Clerk. All

Counsel and any unrepresented parties shall attend the mediation conference. Counsel shall make arrangements that all parties are available by telephone or in person to discuss settlement. All parties at the mediation conference shall be prepared to discuss all liability issues; all damages issues; all equitable and declaratory remedies, if requested; and the position of the parties relative to settlement. Wilful failure to attend the mediation conference shall be reported to the court and may result in the imposition of sanctions.

Nothing stated in the mediation conference shall be held to be an admission or reported to the court. No party shall be bound by any statements made in the mediation conference unless a written statement is reached and signed by the parties or their counsel.

### **C. Disposition**

A report of the final outcome of the mediation conference shall be sent by the mediator to the mediation clerk and the judge assigned to the case. In the event that a settlement is reached, notification of the settlement should be included in the report. If the mediator determines that a settlement is not likely to occur in the mediation conference, the mediator shall terminate the conference and include in the report to the mediation clerk and the judge assigned that there has been compliance with the rule, but that no settlement was reached.

### **D. Certification of Mediators**

Any individual may be certified as a mediator if they have been a member of the Bar of the highest court of a state or the District of Columbia for at least fifteen years; are admitted to practice before this court; and are determined by the Chief Judge to be competent to perform the duties of a mediator. Mediators do not receive compensation for their services, or any reimbursement for expenses. The services of a mediator are considered a pro bono service in the interest of providing litigants with a speedier and less expensive alternative to the traditional courtroom trial. Currently, there are 518 mediators certified.

## **XVI. APPEALS**

### **A. Civil**

In civil cases, you have 30 days to file an appeal, unless the government is a party, in which case you have 60 days. The time commences from the date the order or judgment is entered on the docket (calendar days, not working days). A cross appeal should be filed 14 days from the filing of the first appeal.

An original notice of appeal, a copy for each counsel of record, a copy for the Third Circuit Court of Appeals and a copy for the District Court Judge is needed.

### **B. Criminal**

In criminal cases you have 10 days to file an appeal. Cross appeals should also be filed within 10 days.

An original notice of appeal, a copy for all counsel of record, a copy for the Third Circuit Court of Appeals and a copy for the District Court Judge is needed. Also needed is the Clerk's Information Sheet concerning criminal cases in which a notice of appeal is filed.

If the attorney is court-appointed, pursuant to the provisions of the Criminal Justice Act, a filing fee is not required.

**C. Report and Recommendation of U.S. Magistrate Judge**

A party has 10 days to file objections. An original and one copy is required.

**D. Bankruptcy**

A party has 10 days to file a bankruptcy appeal to the District Court. This appeal is filed in the Bankruptcy Court. An original and copies for all counsel of record are required. Counsel must file designation of record on appeal. (Bankruptcy Rule 8002).

**E. Patent. "Little Tucker Act" and Claims Court Transfer Cases**

Appeals in patent and "Little Tucker Act" cases (28 U. S. C. §§1295 (a) (1) - (2)), from certain interlocutory orders in these cases (28 U.S.C. §1295(c)), and from orders transferring or refusing to transfer cases to the United States Claims Court (28 U.S.C. §1292 (d)(4)(B)), go to the United States Court of Appeals for the Federal Circuit. Federal Circuit Rules, practice notes, and appendix of forms are found in the Rules of Practice before the United States Court of Appeals for the Federal Circuit, available from the Clerk of that Court upon request. Call (202) 633-6550 or write to 717 Madison Place, N.W., Washington, DC 20439.

**F. Service**

Appellate Rule 3(d) outlines the procedures for service of the notice of appeal.

The Clerk of Court is responsible for serving a copy of the notice of appeal by mail to counsel of record other than the appellant. The date the notice of appeal was filed is noted on each copy served. A notation is made on the docket by the clerk of the names of the parties to whom copies are mailed and the date of mailing.

**Rule 53.2 - ARBITRATION - THE SPEEDY CIVIL TRIAL**

**1. Certification of Arbitrators.**

A. The Chief Judge shall certify as many arbitrators as the Chief Judge determines to be necessary under this rule.

B. Any individual may be certified to serve as an arbitrator if: (1) he or she has been for at least five years a member of the bar of the highest court of a state or the District of Columbia, (2) he or she is admitted to practice before this court, and (3) he or she is determined by the Chief Judge to be competent to perform the duties of an arbitrator.

C. Any member of the bar possessing the qualifications set forth in subsection B., desiring to become an arbitrator, shall complete the application form obtainable in the office of the Clerk and when completed shall file it with the Clerk of Court who shall forward it to the Chief Judge of the Court for the Chief Judge's determination as to whether the applicant should be certified.

D. Each individual certified as an arbitrator shall take the oath or affirmation prescribed by Title 28 U.S.C. § 453 before serving as an arbitrator.

E. A list of all persons certified as arbitrators shall be maintained in the office of the Clerk.

F. Any member of the Bar certified as an arbitrator may be removed from the list of certified arbitrators for cause by a majority of the judges of this court.

## 2. Compensation and Expenses of Arbitrators.

The arbitrators shall be compensated \$100.00 each for services in each case assigned for arbitration. Whenever the parties agree to have the arbitration conducted before a single arbitrator, the single arbitrator shall be compensated \$100.00 for services. In the event that the arbitration hearing is protracted, the court will entertain a petition for additional compensation. The fees shall be paid by or pursuant to the order of the director of the Administrative Office of the United States Courts.

Arbitrators shall not be reimbursed for actual expenses incurred by them in the performance of their duties under this rule.

## 3. Cases Eligible for Compulsory Arbitration.

A. The Clerk of Court shall, as to all cases filed on or after May 18, 1989, designate and process for compulsory arbitration all civil cases (including adversary proceedings in bankruptcy, excluding, however, (1) social security cases, (2) cases in which a prisoner is a party, (3) cases alleging a violation of a right secured by the U.S. Constitution, and (4) actions in which jurisdiction is based in whole or in part on 28 U.S.C. §1343) wherein money damages only are being sought in an amount not in excess of \$100,000.00 exclusive of interest and costs. All cases filed prior to May 18, 1989 which were designated by Clerk of Court for compulsory arbitration shall continue to be processed pursuant to this Rule.

B. The parties may by written stipulation agree that the Clerk of Court shall designate and process for arbitration pursuant to this rule any civil case eligible for arbitration pursuant to Section 3.A. of this local civil rule (including adversary proceedings in bankruptcy) wherein money damages only are being sought in an amount in excess of \$100,000.00, exclusive of interest and costs.

C. For purposes of this rule only, damages shall be presumed to be not in excess of \$100,000.00, exclusive of interest and costs, unless:

(1) Counsel for plaintiff, at the time of filing the complaint, or in the event of the removal of a case from state court or transfer of a case from another district to this court, within ten (10) days of the docketing of the case in this district filed a certification that the damages sought exceed \$100,000.00, exclusive of interest and costs; or

(2) Counsel for a defendant, at the time of filing a counterclaim or cross-claim filed a certification with the court that the damages sought by the counterclaim or crossclaim exceed \$100,000.00, exclusive of interest and costs.

(3) The judge to whom the case has been assigned may "sua sponte" or upon motion filed by a party prior to the appointment of the arbitrators to hear the case pursuant to section 4 (c) , order the case exempted from arbitration upon a finding that the objectives of an arbitration trial (i.e., providing litigants with a speedier and less expensive alternative to the traditional courtroom trial) would not be realized because (a) the case involves complex legal issues, (b) legal issues predominate over factual issues, or (c) for other good cause.

#### 4. Scheduling Arbitration Trial.

A. After an answer is filed in a case determined eligible for arbitration, the arbitration clerk shall send a notice to counsel setting forth the date and time for the arbitration trial. The date of the arbitration trial set forth in the notice shall be a date about one hundred twenty (120) days (5 months for cases filed prior to May 18, 1989) from the date the answer was filed. The notice shall also advise counsel that they may agree to an earlier date for the arbitration trial provided the arbitration clerk is notified within thirty (30) days of the date of the notice. The notice shall also advise counsel that they have ninety (90) days (120 days for cases filed prior to May 18, 1989) from the date the answer was filed to complete discovery unless the judge to whom the case has been assigned orders a shorter or longer period for discovery. In the event a third party has been brought into the action, this notice shall not be sent until an answer has been filed by the third party.

B. The arbitration trial shall be held before a panel of three arbitrators, one of whom shall be designated as chairperson of the panel, unless the parties agree to have the hearing before a single arbitrator. The arbitration panel shall be chosen through a random selection process by the clerk of the court from among the lawyers who have been certified as arbitrators. The arbitration clerk shall endeavor to assure insofar as reasonably practicable that each panel of three arbitrators shall consist of one arbitrator whose practice is primarily representing plaintiffs, one whose practice is primarily representing defendants, and a third panel member whose practice does not fit either category. The arbitration panel shall be scheduled to hear not more than four (4) cases on a date or dates several months in advance.

C. The judge to whom the case has been assigned shall at least thirty (30) days prior to the date scheduled for the arbitration trial sign an order setting forth the date and time of the arbitration trial and the names of the arbitrators designated to hear the case. In the event that a party has filed a motion to dismiss the complaint, a motion for summary judgment, a motion for judgment on the pleadings, or a motion to join necessary parties, the judge shall not sign the order until the court has ruled on the motion, but the filing of such a motion on or after the date of said order shall not stay the arbitration unless the judge so orders.

D. Upon entry of the order designating the arbitrators, the arbitration clerk shall send to each arbitrator a copy of all the pleadings, including the order designating the arbitrators, and the guidelines for arbitrators.

E. Persons selected to be arbitrators shall be disqualified for bias or prejudice as provided in Title 28, U.S.C. §144, and shall disqualify themselves in any action in which they would be required under Title 28, U.S.C. § 455 to disqualify themselves if they were a justice, judge or magistrate.

F. The arbitrators designated to hear the case shall not discuss settlement with the parties or their counsel, or participate in any settlement discussions concerning the case which has been assigned to them.

## 5. The Arbitration Trial.

A. The trial before the arbitrators shall take place on the date and at the time set forth in the order of the Court. The trial shall take place in the United States Courthouse in a room assigned by the arbitration clerk. The arbitrators are authorized to change the date and time of the trial provided the trial is commenced within thirty (30) days of the trial date set forth in the Court's order. Any continuance beyond this thirty (30) day period must be approved by the judge to whom the case has been assigned. The arbitration clerk must be notified immediately of any continuance.

B. Counsel for the parties shall report settlement of the case to the arbitration clerk and all members of the arbitration panel assigned to the case.

C. The trial before the arbitrators may proceed in the absence of any party who, after notice, fails to be present. In the event, however, that a party fails to participate in the trial in a meaningful manner, the Court may impose appropriate sanctions, including, but not limited to the striking of any demand for a trial de novo filed by that party.

D. Rule 45 of the Federal Rules of Civil Procedure shall apply to subpoenas for attendance of witnesses and the production of documentary evidence at the trial before the arbitrators. Testimony at the trial shall be under oath or affirmation.

E. The Federal Rules of Evidence shall be used as guides to the admissibility of evidence. Copies or photographs of all exhibits, except exhibits intended solely for impeachment, must be marked for identification and delivered to adverse parties at least ten (10) days prior to the trial and the arbitrators shall receive such exhibits into evidence without formal proof unless counsel has been notified at least five (5) days prior to the trial that the adverse party intends to raise an issue concerning the authenticity of the exhibit. The arbitrators may refuse to receive into evidence any exhibit, a copy or photograph of which has not been delivered prior to trial to the adverse party, as provided herein.

F. A party may have a recording and transcript made of the arbitration hearing at the party's expense.

## 6. Arbitration Award and Judgment.

The arbitration award shall be filed with the court promptly after the trial is concluded and shall be entered as the judgment of the court after the thirty (30) day time period for requesting a trial

de novo has expired, unless a party has demanded a trial de novo, as hereinafter provided. The judgment so entered shall be subject to the same provisions of law, and shall have the same force and effect as a judgment of the court in a civil action, except that it shall not be the subject of appeal. In a case involving multiple claims and parties, any segregable part of an arbitration award concerning which a trial de novo has not been demanded by the aggrieved party before the expiration of the thirty (30) day time period provided for filing a demand for trial de novo shall become part of the final judgment with the same force and effect as a judgment of the court in a civil action, except that it shall not be the subject of appeal.

## 7. Trial De Novo.

A. Within thirty (30) days after the arbitration award is entered on the docket, any party may demand a trial de novo in the district court. Written notification of such a demand shall be served by the moving party upon all counsel of record or other parties. Withdrawal of a demand for a trial de novo shall not reinstate the arbitrators' award and the case shall proceed as if it had not been arbitrated.

B. Upon demand for a trial de novo and the payment to the Clerk required by paragraph 7 (E) of this Rule, the action shall be placed on the trial calendar of the court and treated for all purposes as if it had not been referred to arbitration. In the event it appears to the judge to whom the case was assigned that the case will not be reached for trial de novo within ninety (90) days of the filing of the demand for trial de novo, the judge shall request the Chief Judge to reassign the case to a judge whose trial calendar will make it possible for the case to be tried de novo within ninety (90) days of the filing of the demand for trial de novo. Any right of trial by jury which a party would otherwise have shall be preserved inviolate.

C. At the trial de novo, the court shall not admit evidence that there had been an arbitration trial, the nature or amount of the award, or any other matter concerning the conduct of the arbitration proceeding unless the evidence would otherwise be admissible in the Court under the Federal Rules of Evidence.

D. To make certain that the arbitrators' award is not considered by the Court or jury either before, during or after the trial de novo, the arbitration clerk shall, upon the filing of the arbitration award, enter onto the docket only the date and "arbitration award filed" and nothing more, and shall retain the arbitrators' award in a separate file in the Clerk's office. In the event no demand for trial de novo is filed within the designated time period, the arbitration clerk shall enter the award on the docket and place it in the case file.

E. Upon making a demand for trial de novo, the moving party shall, unless permitted to proceed in forma pauperis, deposit with the Clerk of Court a sum equal to the arbitration fees of \$100.00 for each arbitrator as provided in Section 2. The sum so deposited shall be returned to the party demanding a trial de novo in the event that party obtains a final judgment, exclusive of interest and costs, more favorable than the arbitration award. In the event the party demanding a trial de novo does not obtain a judgment more favorable than the arbitration award, the sum so deposited shall be paid to the Treasury of the United States.



**Rule 53.2.1 Court-Annexed Mediation (Early Settlement Conference)Purpose--**The court adopts this Rule for the purpose of determining whether a program of court-annexed mediation will provide litigants with a speedier and less expensive alternative to the burdens of discovery and the traditional courtroom trial. Those cases that have been assigned an odd number by the Clerk of Court will be placed in the program. The program will be evaluated periodically to determine whether it should be continued.

### 1. Certification of Mediators

- (a) The Chief Judge shall certify as many mediators as the Chief Judge determines to be necessary under this rule.
- (b) An individual may be certified to serve as a mediator if: (1) he or she has been for at least 15 years a member of the bar of the highest court of a state or the District of Columbia; (2) he or she is admitted to practice before this court; and (3) the Chief Judge determines that he or she is competent to perform the duties of a mediator.
- (c) Anyone having the qualifications set forth in subsection (b) and desiring to become a mediator shall complete the application form obtainable from the Clerk of Court and file it with the Clerk of Court, who will forward it to the Chief Judge for his or her determination whether to certify the applicant.
- (d) Each individual certified as a mediator shall take the oath or affirmation prescribed by 28 U.S.C. §453 before serving as a mediator.
- (e) The Clerk of Court shall maintain a list of all persons certified as mediators.
- (f) The court encourages everyone certified as a mediator to participate in such programs as the court may sponsor for the training of mediators.
- (g) A majority of the judges of this court may remove anyone from the list of certified mediators for cause.

### 2. Compensation and Expenses of Mediators.

Mediators shall receive no compensation for services and shall not be reimbursed for expenses. The services and expenses of a mediator shall be considered a pro bono service to the court in the interest of providing litigants with a speedier and less expensive alternative to the burdens of discovery and a courtroom trial.

### 3. Cases Eligible for Mediation

The Clerk of Court shall designate and process for mediation all odd-numbered civil cases except (a) social security cases, (b) cases in which a prisoner is a party, (c) cases eligible for arbitration pursuant to Local Civil Rule 53.2, (d) asbestos cases, (e) cases appealed, withdrawn or transferred from a bankruptcy judge, (f) cases on the Special Management Track provided for in the court's Civil Justice Expense and Delay Reduction Plan and (g) any case that a judge determines, *sua sponte* or on application by a party or the mediator, is not suitable for mediation or should be treated by some other means of alternative dispute resolution.

#### 4. Reference to Mediation

(a) After the first appearance for a defendant is made in a case designated for mediation, the mediation clerk shall promptly send a notice to each party (which, as used in this Rule 15, means the party's attorney of record or the party itself so long as there is no attorney of record for that party) that the case has been referred to mediation, fixing a date, time and place for the initial mediation conference and giving the name and telephone number of the mediator. The date of the initial conference shall be within 60 days after the date of the first appearance for a defendant. The initial conference and any later conference shall be held in a courthouse, a courtroom in the United States Customs House or such other place designated by the mediation clerk.

(b) The mediation shall be conducted by a mediator selected at random by the Clerk of Court from the list of certified mediators.

(c) Upon mailing the notice pursuant to 4 (a), the mediation clerk shall send to the mediator copies of each pleading, of any motion under Rule 12 of the Federal Rules of Civil Procedure and of each order entered in the case.

(d) If postponing the initial mediation conference for approximately 30 days will enable the parties to be better prepared to discuss settlement, the mediation clerk is authorized to do so if, no later than 14 days before the date fixed for the conference, each party delivers or telecopies to the mediation clerk, with copies to the mediator and all other parties, a certification as required by this rule. The certification shall state that (1) the parties have discussed mediation and agree that postponement of the initial conference for approximately 30 days will make it possible for them to be better prepared to discuss settlement, (2) the party will participate in exchanging information among the parties and taking other steps necessary to prepare for the postponed conference and (3) the party is delivering or telecopying its certificate to the mediation clerk within the time required and is sending copies to the mediator and the other parties.

(e) Persons acting as mediators under this rule are assisting the court in performing its judicial function. They shall be disqualified for bias or prejudice as provided by 28 U.S.C. §144 and shall disqualify themselves in any action in which they would be required under 28 U.S.C. § 455 to disqualify qualify themselves if they were a justice, judge or magistrate judge.

#### 5. The Mediation Process

(a) Not later than three days before the initial conference, each party shall deliver or telecopy to

the mediator and to each other party a mediation conference memorandum no longer than two pages summarizing the nature of the case and the party's positions on (1) the major factual and legal issues affecting liability, (2) the relief sought by each party and (3) settlement. The memoranda required by this subparagraph 5(a) are solely for use in the mediation process and shall not be filed with the Clerk of Court.

(b) Before the end of the initial conference, the mediator may, with the consent of the parties, hold the mediation open. If it is held open, the mediator may schedule one or more additional conferences through the mediation clerk, provide for reports from the parties in writing or by telephone and provide for communications between or among the parties. The mediator may not hold the mediation open for more than 60 days from the date of the initial conference.

(c) Counsel primarily responsible for the case and each unrepresented party shall attend the initial conference and participate in any continuation of the mediation process. At the initial conference, the parties shall be prepared to discuss: (1) all liability issues; (2) all damages and other relief issues; and (3) the positions of the parties on settlement. Counsel shall make arrangements for the client or a representative of the client with decision-making authority to be available in person or by telephone at the initial and any later conference for the purpose of discussing settlement. Willful failure of counsel or an unrepresented party to attend any mediation conference or willful failure to have the client or client's representative available as required by this rule shall be reported to the mediation clerk by the mediator and may result in the imposition of appropriate sanctions by the court.

(d) If the time fixed for any conference is not convenient, the mediator is authorized to change it, provided the conference takes place within 15 days of the date fixed and the mediation clerk gives notice of the change at the request of the mediator. Any postponement to more than 15 days after that date must be submitted to the mediation clerk for approval by the judge to whom the case is assigned.

(e) Except as otherwise provided in this paragraph 5 and except as necessary to the reporting of, or the processing of complaints about, unlawful or unethical conduct, nothing communicated during the mediation process (including any oral or written statement made by a party, attorney or other participant and any proposed settlement figure stated by the mediator or on behalf of any party) shall be placed in evidence, made known to the trial court or jury, or construed for any purpose as an admission. No party shall be bound by anything done or said during the mediation process except to enforce a settlement agreement or any other agreement achieved in that process.

(f) Whenever the mediator determines that no settlement is likely to result from the mediation process, the mediator shall terminate the process and promptly thereafter send a report to the mediation clerk stating that mediation has taken place but that no settlement has been reached. In the event, however, that a settlement is achieved during the mediation process, the mediator shall send a report to the mediation clerk stating that a settlement was achieved.

(g) No one shall have a recording or transcript made of anything that occurs during the mediation

process.

#### 6. Relationship to Other Procedures

This rule shall not be construed as modifying the provisions of Federal Rule of Civil Procedure 16, or Local Civil Rule 16.1 or of any order or direction by the court, nor shall it be construed as precluding the use of any kind of mediation outside of the mediation process established by this rule or the use of any other means of alternative dispute resolution. In the event that the arbitration hearing is protracted, the court will entertain a petition for additional compensation. The fees shall be paid by or pursuant to the order of the director of the Administrative Office of the United States Courts.

#### **Rule 83.6.1 Expedition of Court Business**

(a) Attorneys shall promptly advise the clerk of the settlement or other final disposition of a case.

(b) No attorney shall, with just cause, fail to appear when that attorney's case is before the court on a call, motion, pretrial or trial, or shall present to the court vexatious motions or vexatious opposition to motions or shall fail to prepare for presentation to the court, or shall otherwise so multiply the proceedings in a case as to increase unreasonably and vexatiously the costs thereof.